

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 328

Introduced by Assembly Member Charles Calderon

February 18, 2009

An act to amend Section 1633.3 of the Civil Code, *and to add Section 38.5 to the Insurance Code*, relating to electronic transactions.

LEGISLATIVE COUNSEL'S DIGEST

AB 328, as amended, Charles Calderon. Electronic transactions: exceptions.

Existing law generally permits parties to contract to conduct transactions by electronic means. Existing law excepts specific transactions regarding from this permission, including various provisions regarding insurance.

This bill would remove specified insurance provisions from the exception to the general authorization that parties may contract to conduct transactions by electronic means, including, among others, provisions relating to notice of cancellation, notice of nonrenewal, proof of mailing, time of offer, and continuation of coverage.

Existing law generally requires, unless otherwise provided, that any required notice related to insurance transactions may be made by mail, as specified.

This bill would authorize any required notice related to casualty insurance to be made electronically with the consent of the parties, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1633.3 of the Civil Code is amended to read:

1633.3. (a) Except as otherwise provided in subdivisions (b) and (c), this title applies to electronic records and electronic signatures relating to a transaction.

(b) This title does not apply to transactions subject to the following laws:

(1) A law governing the creation and execution of wills, codicils, or testamentary trusts.

(2) Division 1 (commencing with Section 1101) of the Uniform Commercial Code, except Sections 1107 and 1206.

(3) Divisions 3 (commencing with Section 3101), 4 (commencing with Section 4101), 5 (commencing with Section 5101), 8 (commencing with Section 8101), 9 (commencing with Section 9101), and 11 (commencing with Section 11101) of the Uniform Commercial Code.

(4) A law that requires that specifically identifiable text or disclosures in a record or a portion of a record be separately signed, including initialed, from the record. However, this paragraph does not apply to Section 1677 or 1678 of this code or Section 1298 of the Code of Civil Procedure.

(c) This title does not apply to any specific transaction described in Section 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14, 1133, or 1134 of, Sections 1350 to 1376, inclusive, of, Section 1689.6, 1689.7, or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, 1789.33, or 1793.23 of, Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.5, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981) or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3 of, or Section 3071.5 of, the Civil Code, subdivision (b) of Section 18608 or Section 22328 of the Financial Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section 786, 10113.7, 10127.7, 10127.9, 10127.10, 10197,

1 10199.44, 10199.46, 10235.16, 10235.40, 10509.4, or 10509.7 of
2 the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public
3 Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An
4 electronic record may not be substituted for any notice that is
5 required to be sent pursuant to Section 1162 of the Code of Civil
6 Procedure. Nothing in this subdivision shall be construed to
7 prohibit the recordation of any document with a county recorder
8 by electronic means.

9 (d) This title applies to an electronic record or electronic
10 signature otherwise excluded from the application of this title under
11 subdivision (b) when used for a transaction subject to a law other
12 than those specified in subdivision (b).

13 (e) A transaction subject to this title is also subject to other
14 applicable substantive law.

15 (f) The exclusion of a transaction from the application of this
16 title under subdivision (b) or (c) shall be construed only to exclude
17 the transaction from the application of this title, but shall not be
18 construed to prohibit the transaction from being conducted by
19 electronic means if the transaction may be conducted by electronic
20 means under any other applicable law.

21 *SEC. 2. Section 38.5 is added to the Insurance Code, to read:*

22 *38.5. Any notice required to be given to any person by an*
23 *insurer relating to casualty insurance, as defined in Section 1850.4,*
24 *may be provided by electronic transmission pursuant to Title 2.5*
25 *(commencing with Section 1633.1) of Part 2 of Division 3 of the*
26 *Civil Code, if each party has agreed to conduct the transaction by*
27 *electronic means pursuant to Section 1633.5 of the Civil Code.*
28 *The affidavit of the person who initiated the electronic*
29 *transmission, stating the facts of that transmission, is prima facie*
30 *evidence that the notice was transmitted.*